

Proposed Community Association Manager Licensing Rules - For Review and Comment Only (E Rules: Separate Accounts – Records – Accountings)

E-1) Records – Accountings – Funds Not Held.

All “money belonging to others” collected, but not held, by a community association manager on behalf of a common interest community doing business in this state, must be deposited in one or more accounts belonging to the common interest community. If the community association manager has access to common interest community funds, written authorization to collect or disperse money belonging to others must be obtained and an accounting of the funds must be maintained. The community association manager will retain a copy of each such authorization executed, for inspection by an authorized representative of the Director.

- 1) Money belonging to others defined:
Money belonging to others which is collected by the community association manager includes, but is not limited to money collected in connection with: assessments; working capital; fines; reserves; miscellaneous deposits(e.g. amenity rentals); or money belonging to others collected for any other purpose.
- 2) Time limits for deposit of money belonging to others:
All money belonging to others which is collected by a community association manager must be deposited not later than the third business day following receipt.
- 3) Recordkeeping requirements:
A community association manager must supervise and maintain, at the community association manager’s place of business, a record keeping system, consisting of at least the following elements for each common interest community account to which the community association manager has access to or deposits money belonging to others:
 - a) A record called an “account journal” or an equivalent accounting system which records in chronological sequence all money belonging to others which is collected or disbursed by the community association manager on behalf the common interest community. For funds collected, the records maintained in the system must include the date of receipt and deposit, the name of the person who is giving the money, the name of the common interest community and property for which the money was received, the purpose of the receipt, the amount, and a resulting cash balance for the account. For funds disbursed, the records maintained in the system must include the date of payment, the check number, name of the payee, a reference to vendor documentation or other physical records verifying purpose for payment, the amount paid, and a resulting cash balance for the account.
 - b) A written monthly record called the “bank reconciliation worksheet” which proves agreement, on the date of reconciliation, between (1) the cash balance shown in the account journal and (2) the corresponding bank account balance. This worksheet must be maintained in hard copy form for later inspection. The community association manager is not required to reconcile any account when no money belonging to others has been collected or no banking activity has occurred.
 - c) If summary totals are reported to others, the community association manager must maintain supporting records which accurately detail all money received and disbursed under the terms of the management agreements. Such summary totals must be

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reconcilable to detail supporting records. Any accounting report furnished to others must be prepared and delivered according to the terms of the management agreement or, in the absence of a provision in the written management agreement to the contrary, within thirty (30) calendar days after the end of the month in which funds were either collected or disbursed.

- d) All deposits of funds must be documented (*i.e.*, bank deposits) including confirmation of electronic and telephonic transfers or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the community association manager for deposit, the amount of funds tendered, types of funds received from each person, and the property address affected. All disbursements of funds must be supported by source documents such as bids, invoices, contracts, etc., that identify the payees, the common interest community affected and amount of funds transferred for each common interest community. Licensees must produce for inspection by an authorized representative of the Director any cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers as may be reasonably necessary to complete audits or investigations.
- e) In the absence of a written agreement to the contrary, the “cash basis” of accounting will be used for maintaining all required accounts and records. If the “accrual basis” of accounting is requested by the common interest community, such request must be in writing and the manager will maintain separate accrual basis accounts and sets of records for each COMMON INTEREST COMMUNITY affected; and such accounting records must be separate from other accounting records maintained on the cash basis.
- f) Diversion/Conversion prohibited:
Money belonging to one common interest community must not be used for the benefit of another common interest community, the community association manager, or the community association management company.

E-2) Separate Accounts – Records – Accountings –Funds Held.

All “money belonging to others” accepted by a community association manager doing business in this state must be deposited in one or more accounts separate from other money belonging to the community association manager. The community association manager will identify the fiduciary nature of each separate account in the deposit agreement with the recognized bank or institution by the use of the word “trust” or “escrow” and a label identifying the purpose/type of such account, *i.e.*, “operating escrow”, “reserve escrow”, or other abbreviated form defined in the deposit agreement. Unless otherwise permitted by other subsections of this rule, all money belonging to others must be deposited according to the purpose of the transaction in separate types of escrow accounts. The community association manager will retain a copy of each account deposit agreement executed for inspection by an authorized representative of the Director. Written authorization to accept or disperse money belonging to others must be obtained and an accounting of the funds must be maintained. The community association manager will retain a copy of each such authorization executed for inspection by an authorized representative of the Director.

- 1) Accounts in name of designated manager and business entity:

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Such separate trust accounts must be maintained in the name of the community association manager or if the community association manager is a partnership, corporation or limited liability company, any such accounts must be maintained in the name of the designated manager acting for such partnership, corporation or limited liability company and in the name of the licensed partnership, limited liability company or corporation. The community association manager must be able to withdraw money from such separate accounts, but may authorize other licensed or unlicensed cosigners. However, such authorization will not relieve the community association manager of any personal responsibility under the licensing act.

- 2) Escrow funds must be made available immediately without penalty:
Money belonging to others must not be invested in any type of account or security or certificate of deposit which has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity, unless the written consent of all parties to the transaction has been secured.
- 3) Commingling prohibited:
Community association manager's personal funds will not be commingled with money belonging to others, except that an arrangement may be made with a depository to deposit a sufficient amount of the community association manager's funds to maintain such account. One or more separate escrow or trust bank accounts may be maintained by a community association manager pursuant to the following duties and limitations:
 - a) Money held in an escrow or trust account which is due and payable to the community association manager must be withdrawn promptly.
 - b) Money advanced by a community association manager for the benefit of another may be placed in the trust account and identified as an advance, but may be withdrawn by the community association manager only on behalf of such person. Any amount advanced to an escrow or trust account must be identified and recorded in the escrow journal and disclosed in periodic accounting to the beneficiary.
 - c) In the absence of a specific written agreement to the contrary, fees and other charges collected by a community association manager for performing any service on behalf of another are considered "earned" and available for use by the community association manager only after all contracted services have been performed and there is no remaining right of recall by others for such money. The community association manager must identify and record all fees or other charges withdrawn from a trust or escrow account on the account journal of those against whom the fees are charged. If a single disbursement of fees includes withdrawals from more than one trust or escrow account, the community association manager, upon request, will produce for inspection by an authorized representative of the Director a schedule which details (1) the individual components of all amounts included in the sum of such disbursement and (2) specifically identifies the affected beneficiary or common interest community journal. Journal entries must detail such disbursements, including the date or time period for each individual transaction.
- 4) Money belonging to others defined:
Money belonging to others which is received by the community association manager includes, but is not limited to money received in connection with: assessments; working capital; fines; reserves; miscellaneous deposits (e.g. amenity rentals); or money belonging to others received for any other purpose.

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- 5) Time limits for deposit of money belonging to others:
All money belonging to others which is received by a community association manager must be deposited in such community association manager's escrow or trust account not later than the third business day following receipt.
- 6) Record keeping requirements:
A community association manager must supervise and maintain, at the community association manager's place of business, a record keeping system, consisting of at least the following elements for each required escrow or trust account:
 - a) A record called an "escrow or trust account journal" or an equivalent accounting system which records in chronological sequence all money belonging to others which is received or disbursed by the community association manager. For funds received, the records maintained in the system must include the date of receipt and deposit, the name of the person who is giving the money, the name of the common interest community for which the money was received, the purpose of the receipt, the amount, and a resulting cash balance for the account. For funds disbursed, the records maintained in the system must include the date of payment, the check number, name of the payee, a reference to vendor documentation or other physical records verifying purpose for payment, the amount paid, and a resulting cash balance for the account.
 - b) A written monthly record called the "bank reconciliation worksheet" which proves agreement, on the date of reconciliation, between (1) the cash balance shown in the account journal and (2) the corresponding bank account balance. This worksheet must be maintained electronically or in hard copy form for later inspection. The community association manager is not required to reconcile any trust account when no money belonging to others has been received or no banking activity has occurred.
 - c) If summary totals are reported to others, the community association manager must maintain supporting records which accurately detail all money received and disbursed under the terms of the management agreements. Such summary totals must be reconcilable to detailed supporting records. Any accounting report furnished to others must be prepared and delivered according to the terms of the management agreement or, in the absence of a provision in the written management agreement to the contrary, within thirty (30) calendar days after the end of the month in which funds were either received or disbursed.
 - d) If a community association manager has on deposit personal funds sufficient to maintain the trust account, an entry showing such money must be made in the journal. Such money will be included in the bank reconciliation worksheet.
 - e) All deposits of funds into an escrow or trust account must be documented (*i.e.*, bank deposits) including confirmation of electronic and telephonic transfers or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the community association manager for deposit, the amount of funds tendered, types of funds received from each person, and the property address, affected. All disbursements of funds from an escrow or trust account must be supported by source documents such as bids, invoices, contracts, etc. that identify the payees, the common interest community affected and amount of funds transferred for each common interest community. Licensees will produce for

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inspection by an authorized representative of the Director any cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers as may be reasonably necessary to complete audits or investigations.

- f) In the absence of a written agreement to the contrary, the “cash basis” of accounting will be used for maintaining all required escrow or trust accounts and records. If the “accrual basis” of accounting is requested by the beneficiary of funds entrusted to a community association manager, such request must be in writing and the community association manager will maintain separate accrual basis accounts and sets of records for each common interest community affected; and such accounts and records must be separate from other accounts and records maintained on the cash basis.
- 7) Diversion/Conversion prohibited:
Money belonging to one common interest community must not be used for the benefit of another common interest community, the community association manager, or the community association management company.
- 8) Branch office trust accounts require branch office recordkeeping;
In the event a branch office maintains a trust account, separate from the trust account(s) maintained by the main office, a separate record keeping system must be maintained in the branch office.
- 9) Number of separate accounts may vary from zero to unlimited:
A community association manager is not limited as to the number of separate accounts which may be maintained for money belonging to others, and if the community association manager is not in possession of money belonging to others, there is no obligation to maintain a separate trust account. The community association manager must maintain all funds and accounts of the common interest community separate from the funds and accounts of other common interest community’s and maintain all reserve accounts of each common interest community separate from operational accounts of the common interest community.
- 10) In the absence of a written agreement to the contrary, any interest income earned on money belonging to the common interest community will be credited to the common interest community and an entry showing such money must be made in the journal.